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## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-186904

DATE: October 20, 1976

MATTER OF: Charter Medical Corporation

### DIGEST:

1. Protest alleging that RFP requirement was restrictive is untimely, since it was not filed prior to closing date for receipt of proposals.
2. Determination that proposal is not technically acceptable and therefore not within competitive range for further consideration and negotiation is within procuring agency's discretion and will not be disturbed absent clear showing that it was arbitrary or unreasonable. Proposal was properly rejected where offeror's candidate for Medical Director was not certified by specified board as required in solicitation.
3. Where agency rejected proposal on basis of reasonable determination that proposal was technically unacceptable and therefore outside competitive range, claim for proposal preparation costs cannot be allowed.

Request for proposals (RFP) No. W-10-17690-JHC-2 was issued on April 12, 1976, by the National Aeronautics and Space Administration (NASA) Headquarters Contracts Division to procure the services necessary to conduct a program of occupational medicine, consisting of operation of the NASA Headquarters health clinic and physical stress laboratory. Three proposals were received in response to the solicitation. The proposal submitted by Charter Medical Corporation (Charter) was rejected as unacceptable on the basis that Charter's candidate for Medical Director was not certified by the American Board of Internal Medicine (Board), as required by the solicitation.

By letter dated July 8, Charter filed a protest in this Office against the rejection of its proposal. Charter contends that (1) it was not clear in the RFP that certification by the Board was a necessary prerequisite for consideration of a proposal; (2) the requirement for Board certification was unduly restrictive; (3) Charter's

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candidate for Medical Director was in substantial compliance with the RFP requirement, since he is a specialist in internal medicine and eligible to take the examination for Board certification ("Board eligible"); and (4) in view of those qualifications, NASA's rejection without further consideration of Charter's proposal for the reason stated " \* \* \* indicates that there was no serious intent on the part of NASA to award this contract on a fair and competitive basis." In addition, Charter requests reimbursement for the cost of preparing its proposal.

Concerning Charter's first contention, attachment "A" to the RFP, referenced in the RFP instructions for proposal preparation as listing the minimum qualifications for each labor classification, provided:

"PERSONNEL - MINIMUM QUALIFICATIONS

"Following are the position qualifications required for the personnel which the contractor must provide in performance of the resultant contract. These are the minimum qualifications that the proposed personnel must meet in order that an offeror's proposal to be considered acceptable.

\* \* \* \* \*

"Position Qualifications - Medical Director

\* \* \* \* \*

"OTHER QUALIFICATIONS

: The following qualifications are also required: (1) Certified by the American Board of Internal Medicine."

In view of the above, we believe that the requirement that the proposed Medical Director be certified by the Board was clearly stated in the solicitation.

In regard to Charter's second argument, section 20.2(b)(1) of our Bid Protest Procedures, 4 CFR § 20 (1976), provides in part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to \* \* \* the

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closing date for receipt of initial proposals shall be filed prior to \* \* \* the closing date for receipt of initial proposals, \* \* \*

Since the allegedly restrictive nature of the requirement for Board certification was apparent upon receipt of the solicitation, the protest, filed only after rejection of Charter's proposal, is untimely on that issue and will not be considered on its merits. See COMTEN, B-185394, February 24, 1976, 76-1 CPD 130.

Concerning Charter's third and fourth contentions, NASA Procurement Regulation § 3.805-1(a) (1975 ed.) requires that after evaluation of proposals, written or oral discussions shall be held with all responsible offerors who submit proposals within a competitive range, price and "other factors" considered. The term "other factors" includes the technical acceptability of proposals. See Economic Development Corporation, B-184017, September 16, 1975, 75-2 CPD 152. The overall determination of whether a proposal is technically acceptable and therefore within the competitive range is a matter of administrative discretion which will not be disturbed absent a clear showing that the determination was arbitrary or unreasonable. See Contract Support Company, B-184845, March 18, 1976, 76-1 CPD 184.

In a memorandum on the subject, "Professional Medical Requirements for the Contract Medical Director of NASA Headquarters," the Acting Director of NASA's Office of Occupational Medicine, in discussing the need for requiring the Medical Director to be certified by the Board, stated in pertinent part:

"[The Board certification examination] is most important for the government's purpose in identification of qualified applicants objectively. Thus, it serves as the objective evidence of the individual's competency as measured by a third party composed of his peers. It is a fair process and ensures a known quality product. 'Board Qualified' means that an individual has met, in his opinion, the minimum education and training requirement of the board, but that he has not been objectively tested. Obviously this does not meet the government's requirements for an objective test of competence. Therefore the Medical Director for the NASA Headquarters Health Service Contract must be certified by the American Board of Internal Medicine."

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In view of that memorandum, and upon review of the entire record, we cannot conclude that NASA abused its discretion in finding Charter's proposal unacceptable for the reason stated. In this connection, the statement in attachment "A" set forth above specifically cautioned offerors that the qualifications listed were minimum ones that had to be met for a proposal to be considered acceptable. Further, we note that the cover letter to the RFP advised offerors that failure to comply with all RFP instructions could result in an unacceptable proposal. Accordingly, and since the proposal could not, therefore, be considered within the competitive range, NASA had no obligation under its procurement regulations to consider the proposal further or to conduct negotiations with Charter. See Economic Development Corporation, supra.

Based on the above, the protest is denied.

Furthermore, it is apparent from the foregoing that Charter's claim for proposal preparation costs cannot be allowed in view of the standard of "arbitrary and capricious action" necessary for recovery as set forth in T&H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345, and Keco Industries, Inc. v. United States, 492 F.2d 1200 (Ct. Cl. 1974).

  
Deputy Comptroller General  
of the United States